

100

1 Loops. But usually he'll want pasta in the morning.
2 I don't know, but that's been his thing lately.

3 Q And when he comes home, does he have a
4 snack?

5 A Yes, he does. He loves grapes and graham
6 crackers. He really likes these chocolate bunny
7 things from Whole Foods.

8 Q Thank you.

9 MS. ROBB: I have no further questions.

10 THE COURT: Any redirect?

11 MR. POE: Very briefly, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. POE:

14 Q With respect to the Dr. Rainey
15 appointments since the January show cause hearing,
16 were any of those -- you said that you missed one,
17 was that rescheduled?

18 A Yes.

19 Q So that appointment took place, just at a
20 different time than --

21 A Yes.

22 Q And on any of the times that you were late
23 bringing Mason to Dr. Rainey's office, was there any

1 issue with Mr. Clark?

2 A Unfortunately, his car was parked right in
3 front of the entrance. And we're not supposed to be
4 there at the same time for many reasons. Quite
5 frankly, it threw me off, and we were like, what, 5
6 minutes late or something.

7 But I sent an e-mail and asked him not to
8 be there when I'm there. That was the whole point,
9 that we shouldn't -- It makes me, honestly, too
10 nervous. I don't know what's going to be said to
11 me. You know, I don't know.

12 Q You mentioned the migraines and the neck
13 pain that you said were a problem.

14 A Uh-huh.

15 Q Did you suffer from those before May 25th,
16 2014?

17 A Yes. Recently I found out that only 2% of
18 the dentists in America are neuromuscular dentist.
19 I have a neuromuscular dentist. I mean, a lot of
20 these things are due to the fact that I have an
21 abnormality in my -- the left side of my jaw is not
22 the same as my right. So there's a lot of straining
23 of musculature that causes -- So I'm working with

1 him on -- I'm going to need braces, but we'll wait
2 until after I can afford them.

3 Q Okay. With respect to the migraines, has
4 there been any change with respect to the frequency
5 that you suffer from these?

6 A This has been like a nightmare-ish time, I
7 guess. It has been very -- I can only think of one
8 other time in my life that might have been worse.

9 Q And you mentioned that with respect to the
10 health insurance changing, it was a couple of days
11 before you could, first, fill Mason's prescription;
12 right?

13 A Right. And I got rejected two other
14 times, too.

15 Q Right. So your own personal
16 prescriptions, how long before you could fill those?

17 A A couple of days.

18 Q A couple of days.

19 MR. POE: Nothing further, Your Honor.

20 THE COURT: All right. You may step down.

21 THE WITNESS: Oh, I'm sorry.

22 THE COURT: All right. What's remaining?

23 MR. HISS: Your Honor, I have a request. I

1 spoke with the guardian ad litem and Mr. Poe, and I
2 don't believe there's any objection. My expert
3 that's going to testify as to Mrs. Clark's ability
4 to earn money and her earning capacity, is here. I
5 thought she was going to be here -- I thought we
6 would be done this morning; my mistake.

7 She has a broken foot. And she needs to
8 get back down to her therapist to get the foot
9 worked on. She asked me if there is any chance that
10 she -- and I was unaware of this -- could testify
11 out of order.

12 Mr. Poe has no objection, I believe, and
13 Ms. Robb has no objection. I'd like to call her
14 now. It's a 20 minute exam from soup to nuts.

15 THE COURT: 20 minutes in total or 20
16 minutes for direct?

17 MR. HISS: My direct will probably be 10
18 minutes. Her qualification will be 3 to 4.

19 THE COURT: Well, is there any issue on
20 her qualifications?

21 MR. POE: No, Your Honor. There is an
22 issue with calling her. I object to her being
23 called, because proper information was not disclosed

1 to me pursuant to this court's scheduling order.

2 THE COURT: Well, that's a different
3 issue.

4 MR. POE: Right. I just want to clarify
5 that I do object to calling the witness.

6 THE COURT: Okay. So what's the
7 objection?

8 MR. POE: Yes, thank you, Your Honor.

9 So under section 3 of the scheduling order
10 it requests all information discoverable under Rule
11 4-1 (b) or (a)(1) of the Virginia Supreme Court
12 Rules, should be provided or the expert would not
13 ordinarily be permitted to express any non-disclosed
14 opinions at trial.

15 We requested that information in our
16 interrogatory responses. I've received no reports.
17 And I have not received any information about the
18 substance of the facts and opinions and the grounds,
19 the relevance of this person's testimony.

20 The only information I've received is that
21 this person is a vocational expert, and that she
22 wants to impute income to Mrs. Clark.

23 It's an unfair surprise. I've never seen

1 a case in which an expert, a vocational expert,
2 didn't submit a report to the court. I need to know
3 the basis on which she's going to express her
4 opinions. And, frankly, I was prejudiced by not
5 having that information.

6 THE COURT: Do you have a copy of your
7 discovery request?

8 MR. POE: Yes, I do.

9 THE COURT: Let me see it. For the
10 record, which request is it?

11 MR. POE: It's number 28.

12 THE COURT: Interrogatory 28?

13 MR. POE: Yes.

14 THE COURT: Let me see it.

15 (Whereupon, the court reads interrogatory
16 28.)

17 THE COURT: So this tracks rule 4:1?

18 MR. POE: Yes.

19 THE COURT: All right.

20 MR. HISS: The only thing we weren't able
21 to provide, Your Honor, was a report. We would have
22 supplied a written report had we got one. I don't
23 have one. Mr. Poe doesn't have one. The guardian

1 ad litem doesn't have one.

2 The reason for that is the deposition was
3 held about two and a half weeks ago. The court
4 reporter knows the exact date. The expert had asked
5 me to ask specific questions. She sent me a long
6 litany of questions to ask during the deposition.

7 THE COURT: You took your own expert's
8 deposition?

9 MR. HISS: My deposition.

10 THE COURT: You took your own expert's
11 deposition?

12 MR. HISS: No, no, no. The deposition of
13 Mrs. Clark.

14 THE COURT: Oh, I see.

15 MR. HISS: And she needed to --

16 THE COURT: Okay. She needed information.

17 MR. HISS: From that deposition.

18 THE COURT: Okay.

19 MR. HISS: I'm not going to say anything
20 other than, due to scheduling, we could not schedule
21 it any earlier than when we did.

22 THE COURT: So is your expert going to
23 testify as to facts?

1 MR. HISS: All she's going to testify to
2 is Mrs. Clark's resume, her expertise, and the two
3 fields of work Mrs. Clark can get employment in.
4 The one field she feels she can get employment in
5 immediately, and the one field she feels she can get
6 employment in, let's say, within a year. That's the
7 extent of it. And, of course, the money.

8 THE COURT: So what are your expert's
9 opinions? What are the opinions she's going to
10 testify to?

11 MR. HISS: Do you want me to say it right
12 now?

13 THE COURT: Yes, what are the opinions?

14 MR. HISS: Her opinion is going to be that
15 Mrs. Clark can become a paralegal in short order,
16 making about \$60,000 a year in the metropolitan
17 area. And within a year, she can probably get a job
18 as a lawyer making about \$90,000 a year.

19 Those are both entry levels, even though
20 she has an extensive resume. These are entry level
21 positions, given she has been out of work and hasn't
22 been working with a firm for some period of time.
23 But she has been a clerk for two judges; that's hard

1 to come by, and that helps her resume.

2 THE COURT: And any of these opinions
3 you've just related, have they been put to paper and
4 sent to opposing counsel?

5 MR. HISS: No.

6 THE COURT: All right. The objection is
7 sustained.

8 MR. POE: Thank you, Your Honor.

9 THE COURT: All right. Where does that
10 leave us now?

11 MR. HISS: I would call probably one
12 impeachment witness, and I'd probably -- just one
13 impeachment witness for Mrs. Clark.

14 THE COURT: Okay.

15 MR. HISS: And that witness is also going
16 to testify in the ED part of it.

17 THE COURT: About what?

18 MR. HISS: Money that Mr. Clark received.

19 THE COURT: In relation to the house; is
20 that what it is?

21 MR. HISS: Yes, because --

22 THE COURT: Brandenburg?

23 MR. HISS: Yes, she provided funds to keep

1 the house current.

2 THE COURT: I see. All right.

3 And are you done with your case?

4 MR. POE: I'm done with custody. But I
5 still have ED and support.

6 THE COURT: Okay. All right. And how
7 many witnesses do you have?

8 MR. POE: Just the parties, Your Honor.

9 THE COURT: All right. So we'll take a 30
10 minute lunch, and we'll wrap up by 3:00 o'clock, I
11 think. We'll do it all in about an hour and a half,
12 an hour and 45 minutes?

13 MR. HISS: There's a lot of documents and
14 a lot of argument on the house, Your Honor.

15 THE COURT: All right. Well, are the
16 documents stipulated to?

17 MR. HISS: No.

18 THE COURT: Okay. Well, then that's what
19 you can do over the next 30 minutes.

20 MR. HISS: Well, we've showed the
21 documents to Mr. Poe, and he doesn't agree with
22 them.

23 MR. POE: There is a disagreement over

1 income, yes, on the documents.

2 THE COURT: I mean, are there
3 authentication issues with the documents?

4 MR. POE: No, I'm not disagreeing with the
5 documents he's going to submit, I'm just --

6 MR. HISS: Now we have a stipulation.

7 THE COURT: Well, I'll tell you what,
8 we're going to be done by quarter of 4:00. So
9 figure out what you need to do, so you can get all
10 your evidence in that you need to get in, and we're
11 done by quarter of 4:00 with the taking of evidence.
12 Then I'll give you some time for argument. Okay?

13 MR. HISS: I think that's fair.

14 THE COURT: All right. I do too, that's
15 why I ordered it.

16 And what is this agreed upon visitation
17 schedule that you referenced earlier?

18 MS. ROBB: The visitation schedule
19 essentially is going to be the non-custodial parent
20 will have the alternating weekends, typical
21 alternating of Thanksgiving, a division of Christmas
22 winter break, spring break, up to three weeks in the
23 summer, with only two being consecutive, and a

1 Wednesday overnight visit.

2 THE COURT: Okay.

3 MS. ROBB: The only issue in my mind is if
4 the court were to change primary physical custody
5 from Mrs. Clark to Mr. Clark, is I would ask for a
6 transition schedule to do that. I've submitted a
7 proposal to both counsel. I think, although there
8 is no agreement on who is going to be the primary
9 custodian, I think Mrs. Clark is amenable to my
10 proposal, but Mr. Clark is not. And so that's kind
11 of where it is.

12 MR. HISS: Mr. Clark is not amenable to
13 visitation or to the change of custody?

14 MS. ROBB: To the transition that I'm
15 proposing if he were to become the primary
16 custodian.

17 MR. HISS: That will be a very brief
18 argument, Your Honor.

19 MS. ROBB: Because I don't think --

20 THE COURT: All right. Okay. So,
21 counsel, did you meet yesterday for 30 minutes?

22 MR. POE: Yes.

23 MR. HISS: More than that.

1 THE COURT: Yes? How far did you get?
2 Did you resolve anything?

3 MR. HISS: We found out why there was so
4 much disagreement.

5 THE COURT: Okay. Did you resolve
6 anything?

7 MR. POE: I think we moved the needle.
8 The disagreement over spousal support has become a
9 lot less. But I have not --

10 THE COURT: Well, that may change now, so
11 why don't you also take this 30 minutes that we're
12 going to take a break and talk about spousal
13 support.

14 MR. HISS: We took every permutation we
15 could think of and sent it to Mr. Poe. And Mr. Poe
16 was obviously in his office very late last night.
17 He responded. We're still pretty far apart.

18 THE COURT: But there's not going to be
19 any testimony of imputation of income. There's not
20 going to be any evidence of imputation of income.

21 MR. HISS: Well, given the court's ruling
22 --

23 THE COURT: So you probably should take

1 the next --

2 MR. HISS: -- I don't have an expert. All
3 I'm going to be able to do is ask her what she does
4 for a living and how much she thinks she can make.
5 She says she can work in her interrogatories.

6 THE COURT: Right. So why don't you take
7 this 30 minutes and see if you can resolve the
8 spousal support issue also.

9 So figure out how you can get this case
10 done by quarter of 4:00, and also whether or not you
11 can have further discussions on spousal support.
12 All right? And then we'll be back her at 20 after
13 1:00.

14 (Whereupon, there was a 30 minute break in
15 the proceedings for lunch.)

16 THE COURT: All right. Have you resolved
17 anything?

18 MR. HISS: No, it sure helped. The court
19 is still going to have to make a couple of calls,
20 but we really --

21 THE COURT: You're closer?

22 MR. HISS: We're not going to get any
23 closer. It's just there are a couple of things that

114

1 the court is going to have to make a call on. And,
2 of course, that would greatly affect --

3 THE COURT: Okay. What are those? What
4 are those issues?

5 MR. HISS: The issues are going to be her
6 income --

7 THE COURT: Okay.

8 MR. HISS: -- and the money from the
9 house, and how it is to be divided; that's it. And
10 I think we're supposed to argue my client's income.
11 Oh, and, of course, custody.

12 MR. POE: And, I'm sorry, I failed to
13 mention earlier there's also a retirement account in
14 Mr. Clark's name that --

15 THE COURT: All right. So the property
16 issues involve Mrs. Clark's income, the division of
17 the equity of the marital home, and Mr. Clark's
18 retirement?

19 MR. HISS: Yes.

20 THE COURT: Is there an issue as to the
21 division of that, or just what the value is?

22 MR. HISS: Just the percentages. We've
23 agreed on marital debts, the credit cards, consumer

1 type debts, the court is just going to add a
2 percentage.

3 THE COURT: But the retirement is not a
4 debt, it's an asset.

5 MR. HISS: No, I understand that.

6 THE COURT: So is it the percentage of
7 division that's at issue, or is it the amount?

8 MR. CLARK: Excuse me, Your Honor, on the
9 amount of division --

10 THE COURT: As to the retirement, are
11 there two issues, one the value of it, and two the
12 division of it? Or is it simply the issue of
13 division of a value, that you've already agreed on
14 what the division should be?

15 MR. CLARK: I have to speak with opposing
16 counsel. I know the date of when we separated with
17 Vanguard. I have to work with Mr. Poe, opposing
18 counsel. With the date of 2005, we should be able
19 to figure that within five minutes; that's an easy
20 number, and I would assume we'd divide that in half.

21 THE COURT: All right. So the retirement
22 you can work out between the two of you?

23 MR. POE: I believe it's 50% of what was

116

1 there on the date of separation, as long as -- I
2 haven't seen any statements yet, so I'm not able to
3 talk about --

4 MR. CLARK: Yes. But that's the
5 agreement. I will show him on the computer screen.

6 THE COURT: 50%, date of separation?

7 MR. CLARK: Correct. From the date of the
8 marriage to the date of the separation.

9 THE COURT: And that date is March 26th --
10 What's the date of separation?

11 MR. POE: 2014.

12 MR. CLARK: April 19th, 2013, Your Honor.
13 And the date of the marriage was July 16th, 2005.

14 THE COURT: April 19th, 2014 is the date
15 we're using?

16 MR. CLARK: The date of separation is
17 April 2013.

18 THE COURT: '13 is what I meant to say.
19 Okay. So that's resolved.

20 All right. So you want to provide
21 evidence as to what Mrs. Clark's income should be?

22 MR. HISS: Your Honor, the only thing I
23 have to provide is through examination of her.

1 THE COURT: Okay.

2 MR. HISS: Her tax returns, what she made
3 when she was working. Because, frankly, the --

4 THE COURT: And how far apart -- I mean,
5 the two of you are going to be arguing at the end of
6 the evidence. So what are you going to be arguing
7 as to what her income should be?

8 MR. HISS: Mr. Poe thinks her income --

9 THE COURT: Well, you just tell me what
10 your argument is, and Mr. Poe will tell me what his
11 argument is.

12 MR. HISS: My argument is she should be
13 making at least that that she made as a clerk, which
14 is \$55,000. Mr. Poe thinks that she should be
15 making zero.

16 MR. POE: She's making zero right now,
17 that's the reality. I know that the court would
18 consider what is she possibly able to make if she
19 finds something.

20 THE COURT: What do you think the evidence
21 is going to show she's going to be able to make?

22 MR. POE: Close to minimum wage.

23 THE COURT: Which is how much a year?

1 MR. POE: I don't have that number.

2 MR. HISS: Well, minimum wage is \$24,000 a
3 year, give or take.

4 THE COURT: You know, this is really not a
5 very complicated issue. I find it hard to believe
6 that able counsel can't get together and come up
7 with a number as to what her income is. I mean, I
8 hear from Mr. Hiss that it's \$55,000 minimum.

9 MR. HISS: That's a minimum.

10 THE COURT: Okay. And I'm hearing from
11 you zero.

12 MR. POE: I would agree to using minimum
13 wage.

14 THE COURT: Do you think the court's -- Do
15 you think -- I don't know what the evidence is, but
16 you're here as a representative of the court, an
17 officer of the court, you're representing to the
18 court that after I hear all of the evidence, it's
19 reasonable that the court can find her income at
20 zero; is that what you're representing to this
21 court?

22 MR. POE: No. I think --

23 THE COURT: Well, then why haven't you all

1 tried to figure out what it is?

2 MR. POE: We have been.

3 THE COURT: But you're at zero. And
4 you've just stated it's not going to be zero.

5 MR. POE: No, Your Honor, I'm --

6 THE COURT: So what do you think it's
7 going to be?

8 MR. POE: I'm not negotiating just based
9 on zero. I'm willing to negotiate --

10 THE COURT: So what do you think it is?

11 MR. POE: -- based on minimum wage.

12 THE COURT: So what number do you think
13 the evidence is going to show your client's income
14 should be?

15 MR. POE: I believe it's \$19,000. That's
16 the most she has made during the marriage. \$19,000
17 per year.

18 THE COURT: So round it to \$20,000?

19 MR. POE: Yes.

20 THE COURT: So you're at \$55,000 and
21 you're at \$20,000, and the two of you haven't been
22 able to figure it out?

23 MR. HISS: Your Honor -- a phrase I so do

1 hate -- with all due respect, we had an expert that
2 we thought was going to give us much better numbers
3 to work with.

4 THE COURT: Well, that ship has sailed.

5 MR. HISS: I understand.

6 THE COURT: So now that --

7 MR. HISS: But I will proffer -- and I
8 don't think Mr. Poe will take exception to this --
9 that her qualifications are that she's a practicing
10 lawyer, she's got more than 5 years of experience,
11 she was a clerk for two Superior Court judges, and
12 she's licensed in D.C. and Maryland.

13 THE COURT: And all that supports your
14 argument that at a minimum it should be \$55,000; I
15 got that part.

16 MR. POE: Your Honor, she is not working
17 currently. She is doing her best to find a job.
18 She --

19 THE COURT: And I'm going to hear evidence
20 of her efforts to find a job?

21 MR. POE: Yes, in testimony, Your Honor.

22 THE COURT: All right. I'll decide it.

23 And the division of the equity?

1 MR. HISS: We're going to present how the
2 house was acquired very quickly.

3 THE COURT: Okay.

4 MR. HISS: How much he paid for it, how
5 much he put into the house, the money that is owed
6 to his parents, not by a lien, but notes signed by
7 the parents --

8 THE COURT: And signed by him?

9 MR. HISS: -- and signed by him. In fact,
10 he has curtailed it. We're going to show the money
11 he has had to borrow to keep the property current.
12 There's an IRS lien of \$55,000. And his inheritance
13 of \$44,000, he put into the house.

14 THE COURT: All right.

15 MR. HISS: And we'll wrap it up with a
16 nice bow, and give it to the court to make a
17 decision.

18 THE COURT: All right. Mr. Hiss, I guess
19 it's your issue, so call your first witness.

20 MR. HISS: Excuse me?

21 THE COURT: Call your first witness, Mr.
22 Hiss.

23 MR. HISS: Oh, we had one last witness to

1 call. I want to call his sister for impeachment of
2 Mrs. Clark, which I told you I was going to do. In
3 addition, she'll testify as to the inheritance. If
4 the court doesn't want to hear that, that's fine.

5 THE COURT: She's testifying to the two
6 issues: One, the custody, and the second, the
7 marital home?

8 MR. HISS: ED.

9 THE COURT: Okay. Sure.

10 MR. HISS: Amanda Nelson. She's Heather's
11 mother, also, which goes to the best friend, et
12 cetera, and Mason's aunt.
13 Whereupon,

14 AMANDA NELSON
15 the witness, was called for examination by counsel
16 on behalf of the plaintiff, and, after having been
17 duly sworn by the court's clerk, was examined and
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MR. HISS:

21 Q Ma'am, would you state your name for the
22 court, please?

23 A Amanda Nelson.

1 Q And what's your relationship to Mr. Clark?

2 A He's my brother.

3 Q And where do you live, ma'am?

4 A 12700 Huntsman Way, Potomac, Maryland.

5 Q What do you do for a living, ma'am?

6 A I'm an accountant.

7 Q Have you had occasion to visit with Mason,
8 Mr. Clark's son and your nephew?

9 A Yes.

10 Q Okay. How often?

11 A Well, it depends on when it was, but --

12 Q Within the last six months?

13 A Oh, the last six months? Whenever he had
14 him.

15 Q Okay. Would you describe for the court
16 the most recent visit you had with Mason? What
17 happened? Mason's activities and what he was doing?

18 A Okay. That would have been like two
19 Fridays ago. Drew had him, and he called me and
20 asked me to meet him at the house where he was
21 living. Mason was agitated. He wouldn't go in the
22 house. He was running back and forth on the street.
23 It's a cul-de-sac. But he was going back and forth

1 and back and forth.

2 If I approached him, he just kind of ran
3 away. He was just going further down the street.
4 So we just kind of hang out outside for a while to
5 get him to calm down. Then he went to the car to
6 get his iPad so he could take pictures. Then he
7 went into the house to take pictures of stuff.

8 Q Why was he taking pictures, ma'am, do you
9 know? Did he tell you why he was taking pictures?

10 A Well, he wanted to take pictures of Daddy
11 on the phone. But Daddy wasn't on the phone.

12 THE COURT: Who was on the phone?

13 THE WITNESS: I'm sorry. Mason wanted to
14 take pictures on the iPad of his dad, Drew, on the
15 phone.

16 THE COURT: "His dad" is what you said. I
17 couldn't hear what you just said.

18 THE WITNESS: Yes. I'm sorry.

19 THE COURT: "His dad on the phone," okay.

20 BY MR. HISS:

21 Q What else was Mason doing and what was he
22 saying?

23 A "Where is mommy?" You know, "Daddy is on

125

1 the phone with the lawyers." And this is like 9:00
2 o'clock at night. It wasn't even full sentences.
3 It was just "I -- I -- I want -- I --" You know, it
4 was just back and forth.

5 We were like, "Okay, we'll sit on the
6 curb, and we'll see what happens here."

7 Q Did this give you concern?

8 A Oh, yes.

9 THE COURT: Who was sitting on the curb
10 with you?

11 THE WITNESS: Me.

12 THE COURT: Just you?

13 THE WITNESS: Yes. It was like, "Okay --"

14 THE COURT: Well, you said, "We were
15 sitting on the curb."

16 THE WITNESS: Oh, well, he came and sat on
17 the curb, not next to me, for a while.

18 THE COURT: Mason did?

19 THE WITNESS: Mason did. I'm sorry, yes.
20 It was the two of us.

21 BY MR. HISS:

22 Q Okay. And you're Heather's mom; right?

23 A Yes, I have a daughter named Heather, yes.

1 Q We've heard about Heather.

2 A Okay. And Peter.

3 Q Did you attempt to contact the guardian ad
4 litem about this incident?

5 A Not that night. I had previously called
6 her.

7 Q All right. Have you seen Mason act out
8 that outlandishly in the last six months?

9 A Nothing to that extreme. I mean, he
10 doesn't like any hugs or, you know, he wouldn't take
11 his Christmas presents and things, but nothing where
12 he seemed just so agitated; and, I mean, he had
13 boatloads of energy.

14 Q Have you had occasion to visit Mr. Clark's
15 home on Spring Street in the last six months?

16 A No.

17 Q Okay.

18 THE COURT: What is this rebuttal to?

19 MR. HISS: At this point it's not doing
20 what I thought it was going to do, so I'm going to
21 stop my line of questioning and I'm going to change
22 my line of questioning.

23 THE COURT: So this is not rebuttal to